In The

Supreme Court of the United States

October Term, 1978

No. 78-868

LINDBERG HUMMEL,

Petitioner,

v.

COMMONWEALTH OF VIRGINIA,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO GRANT OF CERTIORARI

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OPINION BELOW

The opinion of the Supreme Court of Virginia on August 31, 1978, in *Hummel* v. *Commonwealth of Virginia* has not yet been reported and appears in petitioner's Appendix 1a.

JURISDICTION

The petitioner seeks this Court to review the judgment of the Supreme Court of Virginia on August 31, 1978, pursuant to jurisdiction of 28 U.S.C. § 1257.

QUESTIONS PRESENTED

(1) Whether, in view of *Massiah* v. *United States,* 377 U.S. 201 (1964) and *Brewer* v. *Williams,* 430 U.S. 387 (1977), the trial court erred in refusing to suppress certain taped conversations which took place between the petitioner and the key prosecution witness, said conversations having been recorded with the knowledge and direction of the Commonwealth of Virginia and occurring while petitioner was represented by counsel, in violation of his rights guaranteed by the Sixth Amendment to the Constitution of the United States of America, and made applicable to the States by the Fourteenth Amendment to the Constitution of the United States of America.

(2) Whether the actions of the Commonwealth denied the petitioner of his Sixth Amendment right to effective assistance of counsel.

CONSTITUTIONAL PROVISIONS INVOLVED

(1) Constitution of the United States, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense."

(2) Constitution of the United States, Amendment XIV, § 1:

> ". . . nor shall any state deprive any person of life, liberty or property, without due process of law. . . ."

PRELIMINARY STATEMENT

Support for factual statements made herein will be by reference to the joint appendix filed in the Supreme Court of Virginia and designated (App. .....) or as to specific facts found by the Supreme Court of Virginia in its opinion.

STATEMENT OF THE CASE

Petitioner, Lindberg Hummel, was previously convicted on June 24, 1975, in the Rockingham County Circuit Court of grand larceny by receiving stolen property and was sentenced to serve a term of ten (10) years in the penitentiary. *Hummel* v. *Commonwealth,* 217 Va. 548, 231 S.E.2d 216 (1977). He was released on bond pending his appeal to the Supreme Court of Virginia, and on January 14, 1977, the Supreme Court granted his appeal and remanded the case for a new trial. On April 28, 1977, the petitioner was again found guilty by a jury of grand larceny by receiving stolen goods and sentenced to five (5) years confinement in the Virginia State Penitentiary.

During the pendency of the petitioner's appeal, which resulted in the new trial and subsequent reconviction, and on or about November 14, 1976, the Commonwealth's chief witness, Anthony Thomas Terry, was contacted by petitioner's brother, Woodrow Hummel. and a meeting and conversation took place at a bar and grill in Harrisonburg, Virginia. Following that meeting, Terry arranged through his attorney to contact the Harrisonburg police, filed a complaint, and volunteered to tape further conversations with the Hummels. (App. 023-037, 224-225)

Conversations between the petitioner and Terry took place on November 14, 1976, January 27, 1977, January 28, 1977, and February 2, 1977. All conversations were made from the Harrisonburg Police Department and are transcribed as Exhibits 1 through 4 in the record of the Supreme Court of Virginia. All of these conversations were taped and authorized by the Commonwealth's Attorney based upon probable cause and for the purpose of investigating the possibility of the commission of another crime, to-wit: bribery.

The November conversation clearly sought to feel out Terry by petitioner and by Woodrow Hummel on behalf of petitioner to see whether he would accept money to give a favorable statement to petitioner's attorney that might help on the appeal. After the petitioner was apparently told by his attorneys that a statement would not help, further efforts to convince Terry to give such a statement dwindled.

After the announcement on January 14, 1977, that the petitioner's appeal was granted and a new trial ordered, the petitioner made further inquiries for Terry to contact him, and personally called Terry on January 27, 1977. (App. 206) This conversation was also recorded and petitioner clearly suggested that Terry go in to talk to his lawyers and tell them anything that would make it sound a little better for petitioner, and to tell the police that he did not remember circumstances surrounding the offense. As an alternative, petitioner suggested that maybe Terry should leave town and not be available at the trial. The following excerpt was found to be illustrative of this conversation by the Supreme Court of Virginia, and appears in its opinion:

* * *

"Hummel: In other words, you know damn well if you go back to Court all in the hell you have to do is say you don't remember.

"Terry: Yeah.

"Hummel: I mean that ain't no damn crime not to remember.

"Terry: No.

"Hummel: Anyway, I tell you what I'll do.

"Terry: Yeah.

"Hummel: In other words if you go in there [the attorney's offices] just go in there and talk to [one of my attorneys].

"Terry: Just talk to him?

"Hummel: Yeah, I'll give you $50 whenever you talk to him then if they kick the thing out, I'll give you some more."

* * *

The petitioner suggested to Terry that he tell his attorneys that a man named Bill Shiflett, who was then dead had bought the stolen goods and not petitioner, and that Terry had gotten the money for the stolen articles from under an ashtray and not from petitioner. This was the story that petitioner had apparently told his attorneys. (App. 156-161, 228-242) Although petitioner never made a direct admission of guilt in any of the conversations with Terry, he clearly intended to bribe Terry in an effort to change the outcome of his upcoming new trial. During all of these conversations, petitioner had been previously indicted and had retained counsel on the pending grand larceny charges. Neither he nor his counsel were informed that the conversations with Terry were being taped.

Subsequent to the January 27, conversation the witness, Terry, went to the office of petitioner's attorneys at petitioner's request, and was interviewed concerning the incident. This conversation was also taped, but was not introduced into evidence at the subsequent trial. In fact, the January 27, conversation between petitioner and Terry was the *only* tape recording introduced at petitioner's retrial on April 28, 1977.

The new trial for petitioner had been scheduled to begin on March 17, 1977, but on March 14, 1977, the Commonwealth's Attorney informed petitioner's counsel of the existence of the taped conversations and of his intention to introduce some of them in his case-in-chief. On March 16, 1977, petitioner's counsel moved to withdraw from the

case, their motion was sustained, and present counsel entered the case on March 17, 1977.

Counsel cited for their reasons for withdrawing that the jury might draw an inference of improper conduct on their part, and that it would be unfair for them to represent the petitioner while they were attempting to justify their actions. Later, counsel testified that their primary reason was that they assumed that they would be called as witnesses, and that would have been unethical.

The Commonwealth's Attorney testified at a hearing on the motion to disqualify him as Commonwealth's Attorney that his reasons for taping the conversation with the attorneys was that although he did not suspect the attorneys' involvement in the incident, he was furthering his investigation that another crime was taking place, and that he wanted to continue his surveillance of the witness, Terry. (App. 011) In addition, the Commonwealth's Attorney maintained throughout that the implication from the tapes was clearly that there was no inference of misconduct on behalf of counsel, and that he would clearly so state to the jury if necessary. (App. 008-015, 292) It is true that counsel were later called as witnesses, but for the defense and not the prosecution. The Court thereafter asked petitioner whether he wanted his counsel to withdraw, and he testified that if they felt that way about it, he did. The Court allowed counsel to withdraw based upon petitioner's request, and allowed petitioner time to obtain additional counsel who are representing him now. (App. 018)

The defense moved prior to trial and again at trial to suppress all of the tape recordings. The Commonwealth's Attorney asked to introduce only non-prejudicial portions of the recording of January 27, 1977, between petitioner and Terry. The defense countered that the conversation

should not be taken out of context, and that the entire conversation should be admitted, and the defense should be granted leave to introduce the other conversations "depending upon the outcome of the trial" in order to explain the transcript of January 27. (App. 110-122) The defense, thereafter, argued orally to the jury concerning the prior tapes, the context in which they should be considered, and the fact that the defendant had been the subject of a prior conviction which had been overturned on appeal. (App. 169-172, 243-247)

At trial, the tape recording of the conversation of January 27, partially excerpted above, between petitioner and Terry, was admitted in evidence and played for the jury over the objection of defense counsel. The jury, in fact, heard the tape recording twice, once during trial and once at the jury's request, during deliberations.

ARGUMENT AGAINST GRANTING THE WRIT OF CERTIORARI

I.

The Decision Of The Supreme Court Of Virginia In Sustaining The Petitioner's Criminal Conviction Was Not Contrary To The Sixth Amendment Principles Enunciated By This Court In Massiah v. United States, And Brewer v. Williams. Evidence Should Not Be Excluded Because Of The Conduct Of Police On Sixth Amendment Principles Prior To The Time In Which An Accused Is Entitled To Counsel.

Petitioner has maintained throughout the criminal proceedings in Virginia culminating in the petition, and it is admitted by respondent that, at the time the tape recordings were made between the petitioner and Terry that petitioner had been previously indicted, tried, was awaiting retrial on

the charges of grand larceny by receiving stolen goods, and counsel had been retained and was representing him on the grand larceny charges. It is also not questioned that Terry was the chief witness for the prosecution, had agreed with the police to record conversations with petitioner, and that neither petitioner nor his counsel were informed of the recordings.

Based upon these facts, petitioner's position is and has been that the tape recordings should not have been played for the jury and admitted into evidence in light of the holding and exclusionary rule of *Massiah* v. *United States,* 377 U.S. 201 (1964), and *Brewer* v. *Williams,* 430 U.S. 387 (1977) (extending the exclusionary rule of *Massiah* based upon the Sixth Amendment to a state prosecution under the Fourteenth Amendment). Respondent believes that these cases stand for the legal proposition that evidence of guilt obtained as a result of police interrogation, whether direct or surreptitious, in the absence of counsel after indictment is a violation of the Sixth and Fourteenth Amendments to the Constitution of the United States, and the evidence must be excluded.

The respondent submits that this case is distinguishable from the *Massiah* doctrine and resulting exclusionary rule for two reasons and, consequently, the tape recorded evidence was properly considered. First, the respondent will argue that where an accused has embarked upon criminal activity which is unrelated to the charges for which he stands indicted and represented by counsel, the police are not required by the Sixth Amendment to inform him of their investigatory practices including surreptitious use of an informant to gain information. Secondly, respondent maintains that the exclusionary rule of *Massiah* should not apply to restrict evidence relevant to the charges upon

which an accused has been indicted and counsel retained if that evidence was obtained lawfully upon investigations of unrelated criminal charges.

Massiah, Brewer v. *Williams, supra,* and *McLeod* v. *Ohio,* 381 U.S. 356 (1964) (facts recorded at 203 N.E.2d 349) (a case relied upon by Petitioner below) are all cases in which police officers have, either by direct or surreptitious means, conducted *interrogations* of an accused in the absence of counsel after the right to counsel had attached.

In *Massiah* and *Brewer,* the accused had been indicted and counsel appointed. In *Massiah,* the government sought to record the testimony of the accused and the government informant by a listening device attached to an automobile with the cooperation of the informant. In *Brewer,* detectives sought to gain information from the accused directly by questioning him in the absence of his two appointed attorneys and contrary to their agreement that they would not do so. In *McLeod,* police officers sought to question the accused after his indictment, but prior to the appointment of an attorney. In all of these cases, the *interrogation* was for the purpose of gaining information relative to the crime for which the accused had been indicted, or similar crimes of a like nature.

Respondent believes first that *Massiah's* Sixth Amendment proscription must be read in light of an accused's Fifth Amendment right to be informed of his right to have counsel present at a critical stage of the proceeding. There must be at first instance official *interrogation,* whether it be inside the police station or while the defendant is out on bail. *Messiah, supra; Miranda* v. *Arizona,* 384 U.S. 451 (1961). Interrogation is described in *Massiah* as "testimony elicited by police" and in *Miranda* as "questioning initiated by law enforcement officers after a person has been taken

into custody." Without resorting to the tests of "custody," it is apparent that the *questioning* or *encounter must initiate with* the *police*.

In our case, it is evident from the tape recordings and the Supreme Court of Virginia found, as a matter of fact, that petitioner through his brother and other intermediaries initiated the conversations with Terry, by requesting that Terry contact him. The Supreme Court of Virginia also found, and the evidence amply supports the finding that petitioner sought to frustrate the prosecution of the grand larceny charge by tampering with the testimony of Terry, his principal adverse witness. It was not until this initial contact was made that Terry contacted the police in the nature of a complaint and agreed to be recorded. Consequently, the statements made were not the result of police interrogation or a covert substitute for such, they were free statements to a known state's witness in an effort to see what his attitude was relative to being susceptible to a bribe,[1] an offense for which the petitioner had not been indicted.

In *Massiah, McLeod,* and *Brewer,* the evidence sought to be introduced by the interrogation was voluntary in a constitutional sense, but was information elicited by police after the accused had been indicted upon charges similar to those about which the information was sought, and without the aid of counsel. Here, the cards were on the table and the petitioner knew very well that Terry was the prosecution's witness. There was no initial prompting by Terry or police officials to gain incriminating evidence, and the volition to bribe a known state's witness was clearly that of the

[1] Section 18.2-436, Code of Virginia (1950), as amended: "If any person procures or endures another to commit perjury or to give false testimony under oath in violation of any provision of this article, he shall be punished as proscribed in Section 18.2-434 (Class 5 Felony)...."

petitioner alone, and consequently, it is submitted not an *interrogation* within the meaning of *Massiah* or *Miranda*.

Assuming that the relationship between Terry and petitioner could arguably have developed into an interrogation within the meaning of the Fifth Amendment prior to the January 27 conversation, the respondent believes that it is clear that the Sixth Amendment right advanced by *Massiah* had not attached to the petitioner at the time he made his statements to Terry when *Massiah* is read in light of this Court's prior guidance as to when the Sixth Amendment right attaches to an accused in a criminal investigation.

In *United States* v. *Wade,* 388 U.S. 218 (1967), and *Kirby* v. *Illinois,* 406 U.S. 682 (1972), the Court in considering when an accused has a right to counsel found that the determinations must be made in terms of the weight of the competing interests the right effects. In setting forth the counterveiling policy considerations which govern whether a Sixth Amendment right attaches, this Court spoke in terms of balancing the right of a suspect to be protected from judicial procedures on the one hand, and the interest of society in the prompt, purposeful investigation of an unsolved crime on the other. It has been said that the balance wheel between these competing interests is the constitutional gloss of the Sixth Amendment. *See People* v. *Santos,* 381 N.Y.S.2d 205 (1976).

In *Wade,* the balance was struck in favor of the accused *after* indictment at a line-up procedure, and in *Kirby,* the balance was struck in favor of society *prior* to indictment. It is fair to say that once the state has gained sufficient information to indict, or begin its charging process, it should be required to bring into play its criminal procedures and at the same time afford the accused his constitutional safeguards relative to those procedures. Prior to the state having

gained sufficient information to charge the accused, however, no Sixth Amendment right attaches and society's interests in bringing criminals to justice is paramount. *People* v. *Santos, supra.*

There is no question that the petitioner in this case had been indicted on the larceny by stolen property charges at the time that his conversation with Terry took place and counsel was representing him on those charges. The distinction that the respondent makes between this case and *Massiah,* which was found to be compelling by the Supreme Court of Virginia is that petitioner here was not being investigated on the same charges or within the same sphere of investigation which had prompted the Commonwealth to institute its criminal procedure against him in the first instance.

Here, petitioner on his own volition cut a separate course to commit a totally separate crime from that which had been investigated by the Commonwealth, and at the same time sought to subvert the criminal process of the state on his original charge. The Supreme Court of Virginia found under these facts a different rule from *Massiah* was mandated, and held that:

> "where the accused illegally attempts to subvert his prosecution by bribery, he has neither a right to notice of the investigation of the alleged bribery nor, under the Sixth Amendment, a right to the presence of his attorney. *See Hoffa* v. *United States,* 385 U.S. 293 (1976); *United States* v. *Osser,* 483 F.2d 727 (3rd Cir. 1973)." *Hummel* v. *Commonwealth,* Appendix 6a.

The respondent submits that such a result is in accord with this Court's balancing concept to determine when the Sixth Amendment right attaches. As stated by the Virginia Supreme Court at Appendix 6a:

> "to inform Hummel or his counsel that a bribery investigation was underway would thwart and frustrate the police and prosecution from gathering evidence at the only practical time they could gather that information. To adopt such a rule would place one already indicted or accused of a criminal offense in the favored position of knowing that the police could not investigate his further criminal activity without first giving him notice of their intention to make such an investigation."

The respondent submits to the Court that the philosophical reasoning of the Supreme Court of Virginia is basically the same as that of this Honorable Court in its application of the balancing test to determine when the Sixth Amendment right attaches in cases such as *Kirby* and *Wade.*

It is true, as counsel points out, that the United States made a seemingly similar argument in *Massiah* that the evidence should have been admissible because they were continuing their investigation of *Massiah.* The respondent believes that the basic distinction between the result reached in this case and *Massiah* is that the government's continuing investigation of *Massiah* was on related charges and about offenses which had already been committed by *Massiah* and his cohorts. They had already gained sufficient information to indict, and had elected to do so. In our case, the investigation of petitioner centered around a new criminal charge which had been committed by him *after* he had been indicted, and was not evidentiarily related to the charges which had been initiated by the Commonwealth.

The respondent believes further that the distinction argued in this case gains further validity when viewed in light of the purposes of an evidentiary exclusionary rule of which *Massiah* is an example. There is no question that even under

Massiah evidence of a separate crime obtained in furtherance of the investigation of the same charge for which he had been indicted could have been introduced in a trial for bribery itself. *See Hoffa* v. *United States,* 385 U.S. 293 (1976); *United States* v. *Merritts,* 527 F.2d 713 (7th Cir. 1975); *United States* v. *Missler,* 414 F.2d 1293 (4th Cir. 1969); *United States* v. *Osser,* 483 F.2d 727 (3rd Cir. 1973); *cert. denied,* 414 U.S. 1028 (1973). However, as the Court pointed out in *Massiah,* the same evidence could not have been presented on the charge for which accused had already been indicted if counsel had been appointed on that charge and not notified.

The respondent argues, however, that as found by the Supreme Court of Virginia in this case that the Sixth Amendment right had not attached to the accused during the investigative stage of the bribery charge, and consequently, the purpose for an exclusionary rule was not present. In *Stone* v. *Powell,* 428 U.S. 465 (1976), and *United States* v. *Calandra,* 414 U.S. 338 (1974), the Court discussed in detail the purposes of an evidentiary exclusionary rule in light of its protection of the Fourth Amendment right to be free of an illegal search and seizure. Mr. Justice Powell speaking for six members of the Court in *Stone* v. *Powell,* at page 486, stated the reasons for such a rule:

> "Primary justification for the exclusionary rule then is the deterrence of police conduct that violates Fourth Amendment rights."

The Court explained further in *Stone* that concern with preserving the integrity of the judicial process also has limited force as to the justification for an exclusionary rule, but the application of the rule has been restricted to those areas where its remedial objectives are thought most efficaciously served. *Stone,* page 485 through 487. *See also United States* v. *Calandra, supra; Walder* v. *United States,* 347 U.S. 62 (1954).

Also, in *Stone,* Mr. Justice Powell explained that whether an exclusionary rule should apply in a given instance was based upon a balancing test of competing interests. *Stone,* page 488. The Court using *Walder* v. *United States, supra,* as an example, explained that illegally seized evidence could be used by the government to impeach the defendant where it could not be otherwise admitted because the need to prevent perjury and to insure the integrity of the trial process outweighed the need for deterrence.

Respondent submits that the facts of our case all balance against the application of an exclusionary rule. This is not a case where police have acted improperly. Here, the Commonwealth of Virginia was investigating a totally separate crime committed by the petitioner which was in itself an effort to subvert the integrity of the criminal process of the charges upon which he had been indicted. The information acquired although relevant to the charges for which he was indicted was derived at by totally independent and legal investigatory procedures. *See Wong Sun* v. *United States,* 371 U.S. 471, 486, 488 (1963).

Society's interests in prompt law enforcement and maintaining the integrity of its judicial process must certainly outweigh any Sixth Amendment interest that petitioner, who was attempting to undermine the process, can assert. This is especially true where the conduct in question is an independent crime in its investigatory stages. In accord with the reasoning of the Supreme Court of Virginia, the respondent urges that to extend the Sixth Amendment right under these circumstances would allow the multiple offender a free hand to continue his illegal activities and snicker at

our system of justice. The respondent does not believe that this Court has so interpreted the Sixth Amendment.

II.

The Actions Of The Commonwealth Of Virginia In Recording A Conversation Between The Petitioner's Attorney And A Known Government Witness Did Not Deprive Petitioner Of Effective Assistance Of Counsel As Guaranteed By The Sixth And Fourteenth Amendments To The Constitution Of The United States.

The petitioner argues here by reference to *Massiah,* and the Sixth Amendment to the Constitution essentially the same argument he made to the Supreme Court of Virginia based upon Article I, Section 8 of the Constitution of Virginia, that the actions of the Commonwealth in taping the conversation between Terry and petitioner's attorney deprived him of effective assistance of counsel.

Respondent believes that these arguments are clearly governed by the principles announced by this Court in *Weatherford* v. *Bursey,* 429 U.S. 545 (1977), *Hoffa* v. *United States, supra,* and the reasoning of the Supreme Court of Virginia on these issues. In *Weatherford,* the facts are strikingly similar to this case. An undercover agent participated in a pre-trial conference between an accused and his attorney at the request of the accused. In that case, unlike our case, the attorney was not even aware that the agent was a potential government witness and, in fact, the agent denied that he would testify for the government. Also, in *Weatherford,* conversations were overheard by the agent between the attorney and the defendant himself. The Court held that the Sixth Amendment was not violated, where no communications between attorney and client were devulged by the agent, and where he went to the conference, not to spy, but at the request of the defense.

In *Hoffa,* an informant sat in on conversations that Hoffa had with his attorneys and others during the course of Hoffa's trial on the charge of violating the Taft-Hartley Act. The trial resulted in a hung jury. Hoffa was then tried for tampering with the jury. The informant testified at the latter trial with respect to conversations he had overheard in Hoffa's hotel suite during the prior trial, not including however, the conversations Hoffa had with counsel. The Court held that the Sixth Amendment did not subsume a right to be free from intrusion by informers into the counsel-client consultations, and since the evidence introduced on the bribery charge did not include evidence of an attorney-client privilege, the Sixth Amendment was not violated.

Of similar relevance to this particular issue, it has been held by this Court that a defendant has no justifiable or constitutional protected expectation that a person with whom he is conversing will not then or later reveal the conversation to the police. Even expectations of loyalty are not protective when it comes out that a colleague is a government agent. *See Hoffa* v. *United States, supra,* page 302; *United States* v. *White,* 401 U.S. 745, 749-753, (1970); *Wilkes* v. *Commonwealth,* 217 Va. 885, 234 S.E.2d 250 (1977). Since Terry was known to be a Commonwealth's witness, the decision in these cases would seem to have all the more efficacy.

In fact, Terry was interviewed by counsel with a third party present meaning his testimony would be subject to impeachment no matter what he said if inconsistent at trial. It is evident from the taped conversations between the Petitioner's attorney and the witness that the attorney dealt with the witness at arm's length, he was never contemplated to be a defense witness, and the purpose for the interview was to find out what he was going to say rather than to prepare him for trial.

The Supreme Court of Virginia found on these issues that the transcript of the interview disclosed nothing more than a routine interview by counsel of a prospective witness. Counsel's decision to withdraw from petitioner's defense was made with his acquiescence and consent, because the attorneys were fearful that their continued representation might somehow result in prejudice to the defendant. Petitioner promptly obtained other counsel, who have ably represented him since that time. *Hummel* v. *Commonwealth,* Appendix 7a.

The Petitioner did not assign as error in the Court below that he was entitled to counsel of his particular choice in the Sixth Amendment sense, nevertheless, it is evident from a reading of *Gideon* v. *Wainwright,* 372 U.S. 335 (1963), and *Powell* v. *Alabama,* 287 U.S. 45 (1932), in light of *Stonebraker* v. *Smith,* 187 Va. 250, 46 S.E.2d 406 (1948), that the Constitutions of Virginia and the United States do not require that a defendant is entitled to specific counsel of his choosing. Those cases only require that the Sixth Amendment guarantees him a *reasonable opportunity to secure counsel* of his own choosing. That opportunity was presented him in this case. The Supreme Court of Virginia found that representation by those attorneys was competent, and petitioner has presented no evidence to show otherwise.

CONCLUSION

For the foregoing reasons, the respondent respectfully submits that this Honorable Court should deny the petition for writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that I, Burnett Miller, III, Assistant Attorney General of Virginia, am a member of the Bar of the Supreme Court of the United States, and on the 1st day of February, 1979, I mailed with first class postage prepaid, a true copy of this Respondent's Brief In Opposition To Grant Of Certiorari to William H. Ralston, Jr., Esquire, Moore, Jackson, Graves & Ralston, 312 Virginia National Bank Building, Harrisonburg, Virginia 22801, and to Robert G. Dinsmore, Jr., Esquire, Hatmaker, Dinsmore & Stables, 206 Virginia National Bank Building, Harrisonburg, Virginia 22801, Counsel for Petitioner herein.

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BURNETT MILLER, III
Assistant Attorney General